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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Andy B. Oraha,) No. CV 11-1113-PHX-JAT

Plaintiff,) **ORDER**

vs.)

Metrocities Mortgage, LLC., a California
limited liability company; U.S. Bank,
National Association, as Successor Trustee
to Bank of America, National Association
(successor) by merger to LaSalle Bank
National Association, as Trustee for
Morgan Stanley Mortgage Loan Trust
2007-1XS; Mortgage Electronic
Registration System, a corporation;
America's Servicing Company, a
corporation; Wells Fargo Home
Improvement, a corporation; Wells Fargo
Home Mortgage, a corporation; Black
Corporation I-X; John Doe I-X and Jane
Doe I-X, their spouses,

Defendants.

Pending before the Court is Plaintiff Andy B. Oraha's Objection to Removal and Motion to Remand. Doc. 11. Defendants Wells Fargo Bank, N.A. (erroneously sued as America's Servicing Company, Wells Fargo Home Improvement and Wells Fargo Home Mortgage) and U.S. Bank National Association as trustee for the Morgan Stanley Loan Trust 2007-1XS, filed a response in opposition to Plaintiff's Motion. Doc. 13.

I. BACKGROUND

On June 2, 2011, Mortgage Electronic Registration Systems, Inc. (“MERS”), Wells Fargo Bank, N.A., and U.S. Bank National Association (collectively, “Defendants”), filed a Notice of Removal of the state court civil action filed by Plaintiff. Doc. 1. Defendants assert that their removal was timely under 28 U.S.C. §1446(b), and that this Court is the appropriate forum pursuant to 28 U.S.C. § 1441(b). *Id.* at ¶¶ 3,4. Defendants also contend that this Court has original jurisdiction over this action on the basis of diversity jurisdiction. *Id.* at ¶ 5. According to the Notice of Removal, the parties are diverse, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *Id.* In addition to establishing grounds for removal, Defendants claim that Plaintiff’s joinder of Metrocities Mortgage LLC (now known as Prospect Mortgage LLC) was fraudulent. *Id.* at ¶ 9. According to Defendants, because Prospect Mortgage’s joinder was fraudulent, Prospect Mortgage’s “citizenship should therefore be disregarded for purposes of removal.” *Id.*

Plaintiff’s objections to the Notice of Removal are as follows: (1) the joinder of Prospect Mortgage was not fraudulent; (2) Plaintiff is in the process of serving Prospect Mortgage;¹ and (3) Plaintiff will also serve Morgan Stanley Mortgage Loan Trust, which will destroy diversity of citizenship because “it is highly likely that some of the beneficiaries of that trust are residents of Arizona.” Doc. 11 at 3.

II. LEGAL STANDARD

Pursuant to 28 U.S.C. § 1332, “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is between . . . citizens of different States[.]” 28 U.S.C. § 1332(a)(1).

Diversity jurisdiction is not discretionary. *See First State Ins. Co. v. Callan Assoc.*,

¹ Plaintiff claimed he would have served Prospect Mortgage “by the time that the court reaches this motion for a ruling” (Doc. 12 at 2), however, he has not done so. The consent of unserved defendants is not needed for removal. *Rhoads v. Washington Mut. Bank, F.A.*, No. CV-09-08229, 2010 WL 2691560, at *2 (D. Ariz. July 6, 2010).

1 *Inc.*, 113 F.3d 161, 162 (9th Cir. 1997) (“[T]he obligation to exercise jurisdiction is ‘virtually
 2 unflagging.’”) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800,
 3 817 (1976)). Abstention by federal courts is the “exception rather than the rule.”
 4 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007) (quoting *Green v.*
 5 *City of Tucson*, 255 F.3d 1086, 1089 (9th Cir. 2001)).

6 The removal statute, 28 U.S.C. § 1441, provides, in pertinent part, “any civil action
 7 brought in a State court of which the district courts of the United States have original
 8 jurisdiction, may be removed by the defendant . . . to the district court of the United States
 9 for the district and division embracing the place where such action is pending.” 28 U.S.C.
 10 § 1441(a).

11 **III. ANALYSIS**

12 The dollar amount of Plaintiff’s action is not in dispute, so the only issue for the
 13 Court’s consideration is diversity of citizenship. Because Plaintiff is a resident of Arizona
 14 (Doc. 1 at ¶ 6), all defendants must be from a state other than Arizona for diversity to be
 15 established. 28 U.S.C. § 1332(a)(1). Plaintiff claims the following entities are defendants
 16 or will be defendants: Wells Fargo Bank, U.S. Bank, MERS, Prospect Mortgage LLC, and
 17 Morgan Stanley Mortgage Loan Trust. The Court does not need to address whether Prospect
 18 Mortgage LLC was fraudulently joined, or whether Morgan Stanley Mortgage Loan Trust
 19 is a proper defendant, because assuming all of Plaintiff’s procedural actions were proper,
 20 there is diversity of citizenship. Thus, Defendants were permitted to remove this action, and
 21 remand would be improper.

22 Wells Fargo Bank and U.S. Bank are national banks, which means they are citizens
 23 only of the states in which their main offices, as set forth in their articles of association, are
 24 located. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006) (interpreting 28 U.S.C. §
 25 1348). Wells Fargo’s main office is located in South Dakota, and U.S. Bank’s main office
 26 is located in Minnesota. Doc. 1 at ¶ 7. Accordingly, Wells Fargo and U.S. Bank are diverse.

27 A corporation is a citizen of every state in which it is incorporated and the state
 28 where it has its principal place of business. 28 U.S.C. § 1332(c). MERS is incorporated in

1 Delaware with its principal place of business in Virginia (Doc. 1 at ¶ 8), which means MERS
2 is also a diverse party. 28 U.S.C. § 1332(c).

3 “[L]imited liability companies are citizens of every state of which any member is a
4 citizen.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

5 The General Counsel and Assistant Secretary of Prospect Mortgage LLC declared the
6 following:

7 Prospect Mortgage, LLC is a limited liability company with two members: (1)
8 Prospect Mortgage Services Corp. and (2) Prospect Holding Company, LLC.
9 Prospect Mortgage Services Corp. is a California corporation with its principal
10 place of business in California. Prospect Holding Company, LLC is a limited
11 liability company with one member: Sterling PMC Inc. Sterling PMC Inc. is
12 a Delaware corporation with its principal place of business in Illinois.

13 Doc. 15-1, Ex. A ¶¶ 4-7. None of Prospect Mortgage’s members are citizens of Arizona.
14 Therefore if properly joined, Prospect Mortgage LLC would be a diverse party.

15 The final entity that Plaintiff claims is a defendant is Morgan Stanley Mortgage Loan
16 Trust. “A trust has the citizenship of its trustee or trustees.” *Johnson*, 437 F.3d at 899.
17 Contrary to the contention in Plaintiff’s Motion to Remand, it is irrelevant for purposes of
18 determining diversity jurisdiction where a trust’s beneficiaries reside. *See id.* Plaintiff pled
19 in the Complaint that U.S Bank is the trustee of the Morgan Stanley Mortgage Loan Trust.
20 As already determined, U.S. Bank is a citizen of Minnesota. Therefore if properly joined,
21 Morgan Stanley Mortgage Loan Trust would be a diverse party.

22 **IV. CONCLUSION**

23 For the reasons set forth above, this action was properly removed, and the Court will
24 exercise diversity jurisdiction over this action. Accordingly,

25 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Remand (Doc. 12) is
26 **DENIED.**

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DATED this 7th day of September, 2011.

James A. Teilborg /
United States District Judge